

allows the parties to submit argument, briefs, or documents previously identified for introduction into evidence, however, the record will remain open for as much time as the judge grants for that purpose.

(b) If the appellant waives the right to a hearing, the record will close on the date the judge sets as the final date for the receipt or filing of submissions of the parties.

(c) Once the record closes, additional evidence or argument will ordinarily not be accepted unless:

(1) The party submitting it shows that the evidence or argument was not readily available before the record closed; or

(2) It is in rebuttal to new evidence or argument submitted by the other party just before the record closed.

(d) The judge will include in the record any supplemental citations received from the parties or approved corrections of the transcript, if one has been prepared.

[54 FR 53504, Dec. 29, 1989, as amended at 77 FR 62366, Oct. 12, 2012]

#### EVIDENCE

##### § 1201.61 Exclusion of evidence and testimony.

Any evidence and testimony that is offered in the hearing and excluded by the judge will be described, and that description will be made a part of the record.

##### § 1201.63 Stipulations.

The parties may stipulate to any matter of fact. The stipulation will satisfy a party's burden of proving the fact alleged.

##### § 1201.64 Official notice.

Official notice is the Board's or judge's recognition of certain facts without requiring evidence to be introduced establishing those facts. The judge, on his or her own motion or on the motion of a party, may take official notice of matters of common knowledge or matters that can be verified. The parties may be given an opportunity to object to the taking of official notice. The taking of official notice of any fact satisfies a party's burden of proving that fact.

#### DISCOVERY

##### § 1201.71 Purpose of discovery.

Proceedings before the Board will be conducted as expeditiously as possible with due regard to the rights of the parties. Discovery is designed to enable a party to obtain relevant information needed to prepare the party's case. These regulations are intended to provide a simple method of discovery. They will be interpreted and applied so as to avoid delay and to facilitate adjudication of the case. Parties are expected to start and complete discovery with a minimum of Board intervention. Discovery requests and responses thereto are not to be filed in the first instance with the Board. They are only filed with the Board in connection with a motion to compel discovery under 1201.73(c) of this part, with a motion to subpoena discovery under 1201.73(d) of this part, or as substantive evidence to be considered in the appeal.

[54 FR 53504, Dec. 29, 1989, as amended at 77 FR 62367, Oct. 12, 2012]

##### § 1201.72 Explanation and scope of discovery.

(a) *Explanation.* Discovery is the process, apart from the hearing, by which a party may obtain relevant information, including the identification of potential witnesses, from another person or a party, that the other person or party has not otherwise provided. Relevant information includes information that appears reasonably calculated to lead to the discovery of admissible evidence. This information is obtained to assist the parties in preparing and presenting their cases. The Federal Rules of Civil Procedure may be used as a general guide for discovery practices in proceedings before the Board. Those rules, however, are instructive rather than controlling.

(b) *Scope.* Discovery covers any non-privileged matter that is relevant to the issues involved in the appeal, including the existence, description, nature, custody, condition, and location of documents or other tangible things, and the identity and location of persons with knowledge of relevant facts. Discovery requests that are directed to